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Clerk, U. S. District Court
Eastern District of Tennessee
At Knoxville

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3:11-cv-185
Jordan/Shirley

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

UNITED STATES OF AMERICA
ex rel., WILLIAM C. HYSER, an
individual,

Plaintiff,

v.

EOD TECHNOLOGY, INC., a
corporation, and DOES 1 THROUGH
75, INCLUSIVE,

Defendants.

CASE NO.:

COMPLAINT FOR:

- 1. VIOLATION OF FEDERAL FALSE CLAIMS ACT (31 U.S.C. §§3729-3733)**
- 2. EMPLOYMENT RETALIATION PURSUANT TO 31 U.S.C. §3730**
- 3. WRONGFUL & TORTIOUS DISCHARGE IN VIOLATION OF PUBLIC POLICY**
- 4. WRONGFUL & TORTIOUS DISCHARGE IN VIOLATION OF TENNESSEE CODE §50-1-304**
- 5. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH & FAIR DEALING**

Plaintiff WILLIAM C. HYSER complains and alleges as follows.

I. PARTIES

1. Plaintiff WILLIAM C. HYSER is a resident of Orange County, California.

2. Defendant EODT, INC. ("EODT") is a corporation with its headquarters

1 in Loudon County, Tennessee.

2 3. Plaintiff is ignorant of the true names and capacities of defendants sued
3 herein as DOES 1-75, inclusive, and therefore sues these defendants by such fictitious
4 names. Plaintiff will amend this complaint to allege their true names and capacities
5 when they have been ascertained.

6 4. Plaintiff is informed, believes, and based on such information and belief
7 alleges that each defendant sued herein as DOES 1-75, inclusive, was acting as the
8 agent or employee of each of the other defendants, and in doing the acts alleged herein,
9 was acting within the course and scope of such agency and/or employment, and/or
10 aided, abetted, cooperated with, and/ or conspired with one another to do the acts
11 alleged herein.

12 **II. JURISDICTION**

13 5. This court has jurisdiction of this case pursuant to the federal False Claims Act
14 (31 U.S.C. §3729-3733) ("FCA") and 28 U.S.C. §1331. This Court has supplemental
15 jurisdiction over Plaintiff's other claims pursuant to 28 U.S.C. §1367(a).

16 6. Venue is proper pursuant to 28 U.S.C. §1391(c) because defendant is a
17 corporation residing in this judicial district at the time this action is commenced.

18 **III. FIRST CAUSE OF ACTION**

19 **(Violation of False Claims Act (31 U.S.C. §3729-3733))**

20 7. Plaintiff re-alleges and incorporates herein each and every allegation in
21 Paragraphs 1 through 6 of this Complaint as if set forth here in full.

22 8. The federal False Claims Act (FCA) (31 U.S.C. §3729-3733) provides that
23 anyone who knowingly induces the United States to pay a false claim is liable to the United
24 States. (31 U.S.C. §3729(a).)

25 9. Liability for false claims under the FCA are specifically addressed under 31
26 U.S.C. § 3729, which provides, in relevant part, the following:

27 (a) Liability for certain acts.

28 (1) In general. Subject to paragraph (2), any person who--

1 (A) knowingly presents, or causes to be presented, a false or
2 fraudulent claim for payment or approval;

3 (B) knowingly makes, uses, or causes to be made or used, a
4 false record or statement material to a false or fraudulent claim;

5 (C) conspires to commit a violation of subparagraph (A), (B),
6 (D), (E), (F), or (G);

7 (D) has possession, custody, or control of property or money
8 used, or to be used, by the Government and knowingly delivers, or
9 causes to be delivered, less than all of that money or property;

10 (E) is authorized to make or deliver a document certifying
11 receipt of property used, or to be used, by the Government and,
12 intending to defraud the Government, makes or delivers the receipt
13 without completely knowing that the information on the receipt is
14 true;

15 *****

16 (G) knowingly makes, uses, or causes to be made or used, a
17 false record or statement material to an obligation to pay or
18 transmit money or property to the Government, or knowingly
19 conceals or knowingly and improperly avoids or decreases an
20 obligation to pay or transmit money or property to the
21 Government, is liable to the United States Government for a civil
22 penalty of not less than \$ 5,000 and not more than \$ 10,000, as
23 adjusted by the Federal Civil Penalties Inflation Adjustment Act of
24 1990 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the
25 amount of damages which the Government sustains because of the
26 act of that person.

27 (31 U.S.C. § 3729(a).)

28 10. For purposes of 31 U.S.C. § 3729, the FCA states, in relevant, part that:

Definitions. For purposes of this section--

(1) the terms "knowing" and "knowingly"--

(A) mean that a person, with respect to information--

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the
information; or

(iii) acts in reckless disregard of the truth or falsity of the
information; and

(B) require no proof of specific intent to defraud...

29 (31 U.S.C. § 3729(b).)

30 11. Plaintiff is informed, believes, and based thereon alleges that Defendants have
31 knowingly violated the FCA and conspired to violate the FCA in the following ways.

32 12. Plaintiff began employment with EODT on September 30, 2010 as an Assistant

1 Team Leader providing personal security detail in Iraq to protect General Officers from
2 assassination, kidnapping, injury, or embarrassment pursuant to an employment contract.
3 Plaintiff began his mission with EODT in Iraq on October 05, 2010.

4 13. Plaintiff is informed, believes, and based thereon alleges that AL HUREA is a
5 subsidiary or sister company of Defendant EODT that is the employment company or division
6 of EODT that hires local Iraqi Nationals so that EODT can secure private security contracts in
7 Iraq with the US Government.

8 14. Plaintiff is informed, believes, and based thereon alleges that EODT and AL
9 HUREA shared the same offices in Iraq until recently when EODT physically moved its
10 offices to appear as a company separate from AL HUERA.

11 15. Plaintiff is informed, believes, and based thereon alleges that KBR is a
12 subsidiary or sister company of Haliburton that the US Government has awarded certain
13 contracts to in Iraq to operate US fuel stations that must be operated by local Iraqi Nationals
14 employed by KBR as a condition of their contracts.

15 16. Plaintiff is informed, believes, and based thereon alleges that the US
16 Government entered into certain contracts with EODT whereby EODT would provide private
17 security services on particular missions in Iraq and Afghanistan (the "Contract(s)").

18 17. Plaintiff is informed, believes, and based thereon alleges that under the
19 Contracts, the US Government would pay for fuel for a certain number of vehicles that were
20 authorized and designated to be used under each particular Contract with EODT for each
21 particular mission.

22 18. Plaintiff is informed, believes, and based thereon alleges that pursuant to the
23 Contracts, EODT had to apply to the Department of State and/or Department of Defense,
24 depending on the particular mission, for fuel permits to obtain free gas at the US fuel stations
25 in Iraq run by local Nationals employed by KBR.

26 19. Plaintiff is informed, believes, and based thereon alleges that in applying for
27 fuel permits, EODT is required to submit their application to KBR, who monitors the
28 application process, and KBR then, in turn, submits EODT's application to the Department of

1 State and/or Department of Defense for final approval.

2 20. On October 23, 2010, EODT moved Plaintiff from the American Embassy in
3 Iraq to a duplex owned, operated, and/or leased by AL HUREA as temporary housing for
4 EODT employees.

5 21. Shortly thereafter, Plaintiff discovered that EODT and AL HUREA were
6 knowingly and fraudulently adding additional, unauthorized personnel and equipment under
7 existing Contracts with the US Government that EODT was billing and receiving money from
8 the US Government.

9 22. Plaintiff is informed, believes, and based thereon alleges that, in the ordinary
10 course of business, EODT employees such as Plaintiff would follow proper protocol by
11 submitting applications to KBR for fuel permits to obtain fuel for EODT vehicles that were
12 already approved under existing Contracts for specific missions.

13 23. Plaintiff is informed, believes, and based thereon alleges that, often times,
14 certain Contracts would authorize a higher number of vehicles to receive fuel permits than an
15 EODT employee following proper protocol was applying for in the application.

16 24. Plaintiff is informed, believes, and based thereon alleges that Iraqi Nationals
17 employed by KBR to operate the fuel stations had possession of each Contract under which
18 EODT employees were legitimately submitting applications and, thus, knew the exact
19 maximum number of fuel permits that could be obtained under each Contract.

20 25. Plaintiff is informed, believes, and based thereon alleges that certain Iraqi
21 Nationals employed by KBR would, therefore, identify this as an opportunity to obtain
22 fraudulently additional fuel permits by adding additional vehicle identification numbers
23 ("VIN") to the application after the fact without the knowledge of the EODT employee who
24 submit the original application.

25 26. Plaintiff is informed, believes, and based thereon alleges that when the
26 opportunity presented itself, Iraqi Nationals employed by KBR would notify certain EODT
27 and AL HUREA employees of just how many more vehicles could be added to the application
28 to obtain as many additional fuel permits as was allowed under each particular Contract.

1 27. Plaintiff is informed, believes, and based thereon alleges that certain EODT and
2 AL HUREA employees including, without limitation, a woman named Helen, who is a
3 Supervisor / Office Manager ("HELEN") in charge of many of the employees engaged in the
4 misconduct, would then gather additional VINs of vehicles not owned by EODT and/or that
5 were not being used for service under the particular Contract for which the fuel permits were
6 being requested and would add them to each application, after the fact, and without the
7 knowledge of the employee who originally and legitimately submitted the application;
8 whereas, each vehicle is issued a separate fuel permit card.

9 28. HELEN or one of the other employees involved in the misconduct would then
10 physically pick up the fuel permit cards from KBR to conceal their misconduct from the non-
11 participating EODT employee and would give the fuel cards that were legitimately applied for
12 to the EODT employees operating those vehicles and would give the fuel cards for the other
13 vehicles that were fraudulently obtained to their cohorts and superiors at EODT and AL
14 HUREA.

15 29. Plaintiff is informed, believes, and based thereon alleges that the vehicles that
16 were fraudulently added to EODT's fuel permit applications after the fact were not actually
17 used for the specific purpose and scope of work designated in each Contract under which the
18 permit was obtained and/or the vehicles were not registered and/or owned by EODT.

19 30. Plaintiff is informed, believes, and based thereon alleges that EODT and AL
20 HUREA have violated the FCA by engaging in a pattern and practice of knowingly and
21 fraudulently obtaining EODT fuel cards to obtain fuel at US fuel stations for use in an H2
22 Hummer, BMW Sedan, and Chrysler (300) that are personal vehicles owned by Mr. Imod
23 Abdel Karim Arkawazi, who is an owner of AL HUREA, as well as for use in four (4) F350
24 gun trucks and four (4) Mitsubishi pick-up trucks that are owned and/or registered to AL
25 HUREA.

26 31. Plaintiff is informed, believes, and based thereon alleges that the foregoing
27 vehicles, EODT vehicles, and other vehicles not owned and/or registered to EODT were also
28 used to fill up at local KBR fuel stations using the fraudulently procured fuel cards to transport

1 fuel to different locations so that the fuel from the tanks could then be siphoned for sale and/or
2 use in other unauthorized vehicles in which VINs were never submitted and/or identified
3 and/or to fuel the Generator on the AL HUREA complex that is used to produce electricity for
4 the AL HUREA complex and electricity that is being sold at a rate of \$1,000.00 per month to
5 the TOIFOR complex adjacent to the AL HUREA complex.

6 32. On November 27, 2010, while checking on the fuel cards for EODT mission
7 vehicles, Plaintiff saw four (4) AL HUREA gun trucks operating with Iraqi private security
8 permits displayed on the doors of each vehicle obtain fuel from a KBR fuel station using
9 EODT fuel cards. The Iraqi private security permits displayed on the exterior of each of the
10 vehicle doors revealed a "59", representing AL HUREA's private security company, not "22"
11 which represents EODT as a separate and distinct private security company.

12 33. Plaintiff then saw the fuel being siphoned from the fuel tanks of the four (4) AL
13 HUREA gun trucks and took a photograph of the AL HUREA employee(s) that were
14 siphoning the fuel.

15 34. Therefore, on that same day on November 27, 2010, Plaintiff contacted Mr.
16 Mark Wilson, at the American Embassy in Iraq, who verifies that Contracts with EODT are, in
17 fact, Department of State Contracts for which fuel cards may be obtained.

18 35. Plaintiff was advised by Mr. Wilson that he was not the point of contact to
19 report such a violation but that he would find out who Plaintiff could report the misconduct to
20 and that he would then contact Plaintiff.

21 36. At this same time, Plaintiff also reported the misconduct to his superiors,
22 following the chain of command, consisting of Mr. Jason Parrish (Team Leader) who sent it to
23 Mr. Guy Irwin (Contract Project Manager) who sent it to Mr. Chris Meyer (Country Security
24 Manager) and then on to Mr. Paul Lane (EODT Country Manager). In reverse action, starting
25 with Mr. Paul Lane, strict orders and instructions were passed down the same chain of
26 command to forget about what they had discovered and to move on.

27 37. On November 30, 2010, Plaintiff re-contacted Mr. Wilson at the Department of
28 State regarding the fuel theft and other misconduct, and Mr. Wilson referred Plaintiff to Mr.

1 Cook with Inspector General's Office.

2 38. Plaintiff met with Mr. Cook mid-afternoon on November 30, 2010 along with
3 another investigator from Mr. Cook's office at which time Plaintiff explained the misconduct
4 that he had discovered and gave them all of evidence that he had at that time. Plaintiff was
5 then specifically requested by Mr. Cook and the other investigator to obtain VINs to assist
6 them in tracking the fuel records for the vehicles in question, which Plaintiff did.

7 39. Plaintiff is informed, believes, and based thereon alleges that shortly thereafter
8 on December 08, 2010, EODT's headquarters in the State of Tennessee were raided by
9 multiple Federal Agencies.

10 40. In late December, Plaintiff contacted a woman named Dawn who Plaintiff
11 believed to be an agent with the FBI's local field office. Plaintiff discovered that she was not,
12 but she referred Plaintiff to Mr. Greg Nester, who is a field agent with the FBI's field office in
13 San Francisco, California who was temporarily stationed in Iraq.

14 41. Over the following four weeks, Plaintiff spoke to Mr. Nester in Iraq and finally
15 met with Mr. Nester along with Ms. Brandee N. Kemer, with the Department of Defense
16 Criminal Investigation Service, at the American Embassy in the middle of January 2011 to
17 further discuss the fuel theft and misconduct of EODT and AL HUREA.

18 42. Plaintiff is informed, believes, and based thereon further alleges that EODT was
19 purchasing weapons such as 9 mm firearms in the United States and shipping them to EODT
20 in Iraq and other countries.

21 43. Plaintiff is informed, believes, and based thereon alleges that, on several
22 occasions, EODT and AL HUREA tried to obtain fraudulently a fuel card for a 1000 liter fuel
23 truck by adding it under certain EODT Contracts after Plaintiff had legitimately applied for
24 fuel permits under particular Contracts.

25 44. Plaintiff is informed, believes, and based thereon alleges that EODT and AL
26 HUREA were trying to slip the fuel truck under an existing Contract so that they could supply
27 free fuel to their generator that provides power to: (1) villas where EODT employees are
28 temporarily housed; (2) AL HUREA business offices and living quarters for AL HUREA

1 employees; (3) sell to TOIFOR, which is the company adjacent to AL HUREA.

2 45. Plaintiff is informed, believes, and based thereon alleges that pursuant to certain
3 Contracts, EODT is authorized to employ a certain number of personnel to work only under a
4 particular Contract for a particular mission.

5 46. Plaintiff is informed, believes, and based thereon alleges that each US citizen
6 working for EODT under a Contract with the US Government must be issued a Department of
7 Defense ("DOD") common access card ("CAC") first before being deployed to Iraq and/or
8 Afghanistan on any mission.

9 47. Plaintiff is informed, believes, and based thereon alleges that before the US
10 Government will issue a CAC, EODT must obtain a letter of authorization ("LOA") from the
11 US Government.

12 48. Plaintiff is informed, believes, and based thereon alleges that for each Contract,
13 EODT must enter all private information of each EODT employee who will be assigned to
14 work under each particular Contract into the Synchronized Pre-deployment and Operational
15 Tracker ("SPOT") (i.e., web-based computer system used to process, maintain, and track
16 EODT employee information upon which LOA's are issued) and the US Government then, in
17 turn, accesses the private information from SPOT, processes it for security clearance, and
18 issues a LOA for each particular employee assigned to each particular Contract.

19 49. Plaintiff is informed, believes, and based thereon alleges that each employee
20 then takes the LOA that was issued to him or her by the US Government to a military base
21 where the LOA and the EODT employee's personal information is further processed and a
22 CAC card is issued to that particular employee.

23 50. Plaintiff is informed, believes, and based thereon alleges that, in order to be
24 issued a CAC, the employee must be a US Citizen because a CAC contains identifying
25 information as well as a photograph of the person it is issued to that allows the CAC holder
26 unfettered access and clearance to all US Military Bases as well as to all privileges thereon.

27 51. Plaintiff is informed, believes, and based thereon alleges that EODT has
28 violated national security and the FCA by knowingly and fraudulently adding Iraqi Nationals

1 as employees of EODT under certain Contracts to obtain CACs and other badges for those
2 Iraqi Nationals who are not actually working under the Contracts for which they were issued a
3 CAC.

4 52. In or about January 2011, at Plaintiff's meeting with Mr. Greg Nester, FBI Field
5 Agent, and Ms. Brandee N. Kemer, with the Department of Defense Criminal Investigation
6 Service, Plaintiff also informed them that EODT was knowingly and fraudulently adding
7 additional unauthorized personnel as well as equipment to Contracts that EODT was billing
8 and receiving money from the US Government.

9 53. Plaintiff is informed, believes, and based thereon alleges that the information
10 that Plaintiff provided to Mr. Nester and Ms. Kemer triggered Mr. Nester to further investigate
11 the matter by interviewing Warrant Officer Perez, who is an attorney for the US Army and
12 Army Contracting Officer RE ("ACORE") at the Forward Operating Base ("FOB") Shield
13 overseeing the performance of Contracts between the US Military and EODT.

14 54. Plaintiff is informed, believes, and based thereon alleges that the information
15 that Plaintiff disclosed to Mr. Nestor regarding EODT adding extra unauthorized personnel
16 consisting of Iraqi Nationals to Contracts to obtain CACs where, *inter alia*, the extra personnel
17 was not working under the particular EODT Contract that EODT added them to was
18 confirmed by Officer Perez.

19 55. On January 25, 2011, Al Martin, J-9 Team Leader at EODT, ordered Plaintiff to
20 move from the AL HUREA villa where Plaintiff had been temporarily living as an EODT
21 employee because Mr. Imod Abdel Karim Arkawazi, the owner of AL HUREA, wanted
22 Plaintiff fired for investigating the fuel theft and personnel misconduct matters and because
23 Plaintiff refused to participate in and/or remain silent about the illegal activities.

24 56. On January 29, 2011, Plaintiff was moved again to the EODT Head Quarters on
25 the VBC complex because his American Embassy badge was pulled in retaliation against
26 Plaintiff for investigating EODT violations of the FCA as well as other misconduct including,
27 without limitation, violations of national security, and for refusing to participate in and/or
28 remaining silent about the illegal activities.

1 57. Over the next few days, Mr. Chris Meyer (Country Security Manager) and Mr.
2 Paul Lane (EODT Country Manager) at EODT reassured Plaintiff that he would not be
3 terminated and that Plaintiff should go "on leave" and enjoy.

4 58. On February 04, 2011, Plaintiff left Iraq "on leave."

5 59. Plaintiff is informed, believes, and based thereon alleges that in about the
6 middle of February 2011, the EODT headquarters and FOB Shield locations were raided by
7 several Federal Agencies.

8 60. On discovering that Plaintiff was further refusing to participate in the fraudulent
9 misconduct by EODT and AL HUERA and that Plaintiff had reported Defendants' misconduct
10 to the US Government, Defendant terminated Plaintiff from EODT on February 24, 2011.

11 **IV. SECOND CAUSE OF ACTION**

12 **(Employment Retaliation Pursuant to 31 U.S.C. §3730(h))**

13 61. Plaintiff re-alleges and incorporates herein each and every allegation in
14 Paragraphs 1 through 60 of this Complaint as if set forth here in full.

15 62. Pursuant to the FCA, an employee who is retaliated against by his or her
16 employer because of lawful acts by the employee to further an action under 31 U.S.C. §3730 is
17 entitled to all relief necessary to make the employee whole.

18 63. In relevant part, 31 U.S.C. §3730 provides that:

19 (1) In general. Any employee, contractor, or agent shall be
20 entitled to all relief necessary to make that employee, contractor, or
21 agent whole, if that employee, contractor, or agent is discharged,
22 demoted, suspended, threatened, harassed, or in any other manner
23 discriminated against in the terms and conditions of employment
24 because of lawful acts done by the employee, contractor, agent or
associated others in furtherance of an action under this section or
other efforts to stop 1 or more violations of this subchapter [31
USCS §§ 3721 et seq.].

25 (2) Relief. Relief under paragraph (1) shall include
26 reinstatement with the same seniority status that employee,
27 contractor, or agent would have had but for the discrimination, **2**
times the amount of back pay, interest on the back pay, and
28 **compensation for any special damages sustained as a result of**
the discrimination, including litigation costs and reasonable

1 **attorneys' fees**. An action under this subsection may be brought in
2 the appropriate district court of the United States for the relief
3 provided in this subsection.

4 (Emphasis added.) (31 U.S.C. Section 3730(h).)

5 64. Congress added 31 U.S.C. § 3730(h) to the FCA in 1986 to protect
6 "whistleblowers," those who come forward with evidence that their employer is defrauding the
7 government, from retaliation by their employer. (S. Rep. No. 345, 99th Cong., 2d Sess. 34
8 (1986), reprinted in 1986 U.S.C.C.A.N. 5266, 5299.)

9 65. As alleged more fully herein above, at all relevant times, Plaintiff was engaging
10 in conduct protected under the FCA.

11 66. EODT and AL HUERA knew that Plaintiff was engaging in conduct protected
12 by the FCA.

13 67. EODT and AL HUERA had actual knowledge that they were violating the
14 FCA, conspired to violate the FCA, and/or acted in deliberate ignorance of the truth or falsity
15 of their false or fraudulent claims, and/or acted in reckless disregard of the truth or falsity of
16 their false or fraudulent claims in violation of the FCA.

17 68. EODT and AL HUERA retaliated and discriminated against Plaintiff because
18 he was engaging in protected conduct under the FCA and refused to participate in and/or
19 remain silent about their illegal activities.

20 69. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff
21 has lost income, employment, and career opportunities, and has suffered other economic loss
22 in an amount that exceeds \$50,000, the precise amount of which will be proved at trial.

23 70. As a direct, foreseeable, and proximate result of Defendants' outrageous
24 conduct as alleged herein, Plaintiff has suffered great anxiety, embarrassment, anger, loss of
25 enjoyment of life, and severe emotional distress in an amount that exceeds \$50,000, the precise
26 amount of which will be proved at trial.

27 71. Defendants committed the acts alleged herein maliciously, fraudulently, and
28 oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper

1 and evil motive amounting to malice. Alternatively, Defendants' despicable conduct was
2 carried out in conscious disregard of Plaintiff's rights. Defendants' conduct was carried out by
3 a managing agent, or an officer, a director, or a managing agent of Defendants, and Defendants
4 had advance knowledge of the unfitness of its decision-maker and employed him or her with a
5 conscious disregard of Plaintiff's rights and/or authorized and/or ratified his or her conduct.
6 As a result of Defendants' conduct, Plaintiff is entitled to recover punitive damages in an
7 amount commensurate with each Defendant's wealth.

8 **V. THIRD CAUSE OF ACTION**

9 **(Wrongful & Tortious Discharge in Violation of Public Policy)**

10 72. Plaintiff re-alleges and incorporates herein each and every allegation in
11 Paragraphs 1 through 71 of this Complaint as if set forth here in full.

12 73. The FCA (31 U.S.C. §§3729-3733) and Tennessee's Whistleblower Statute
13 (T.C.A. 50-1-304) embody fundamental, substantial, and well-established public policies. In
14 discharging Plaintiff, Defendant EODT violated the fundamental, substantial, and well-
15 established public policies embodied in the FCA (31 U.S.C. §§3729-3733) and Tennessee's
16 Whistleblower Statute (T.C.A. 50-1-304).

17 74. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff
18 has lost income, employment, and career opportunities, and has suffered other economic loss
19 in an amount that exceeds \$50,000, the precise amount of which will be proved at trial.

20 75. As a direct, foreseeable, and proximate result of Defendants' outrageous
21 conduct as alleged herein, Plaintiff has suffered great anxiety, embarrassment, anger, loss of
22 enjoyment of life, and severe emotional distress in an amount that exceeds \$50,000, the precise
23 amount of which will be proved at trial.

24 76. Defendants committed the acts alleged herein maliciously, fraudulently, and
25 oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper
26 and evil motive amounting to malice. Alternatively, Defendants' despicable conduct was
27 carried out in conscious disregard of Plaintiff's rights. Defendants' conduct was carried out by
28 a managing agent, or an officer, a director, or a managing agent of Defendants, and Defendants

1 had advance knowledge of the unfitness of its decision-maker and employed him or her with a
2 conscious disregard of Plaintiff's rights and/or authorized and/or ratified his or her conduct.
3 As a result of Defendants' conduct, Plaintiff is entitled to recover punitive damages in an
4 amount commensurate with each Defendant's wealth.

5 **VI. FOURTH CAUSE OF ACTION**

6 **(Wrongful & Tortious Discharge in Violation of Tennessee Code §50-1-304)**

7 77. Plaintiff re-alleges and incorporates herein each and every allegation in
8 Paragraphs 1 through 76 of this Complaint as if set forth here in full.

9 78. Tennessee's Whistleblower Statute set forth in Tennessee Code Section 50-1-
10 304 states, in relevant part, that:

11 (a) No employee shall be discharged or terminated solely
12 for refusing to participate in, or for refusing to remain silent about,
13 illegal activities.

14 *****

15 (c) As used in this section, "illegal activities" means
16 activities which are in violation of the criminal or civil code of this
17 state or the United States or any regulation intended to protect the
18 public health, safety or welfare.

19 (d) (1) Any employee terminated in violation of subsection
20 (a) shall have a cause of action against the employer for retaliatory
21 discharge and any other damages to which the employee may be
22 entitled.

23 (2) Any employee terminated in violation of subsection (a)
24 solely for refusing to participate in, or for refusing to remain silent
25 about, illegal activities who prevails in a cause of action against an
26 employer for retaliatory discharge for such actions shall be entitled
27 to recover reasonable attorney fees and costs.

28 (Tenn. Code Ann. §50-1-304.)

79. As alleged more fully herein above, Plaintiff refused to participate in and/or
refused to remain silent about Defendants' illegal activities.

80. Therefore, Defendant EODT fired Plaintiff in violation of Tennessee Code
Section 50-1-304.

1 81. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff
2 has lost income, employment, and career opportunities, and has suffered other economic loss
3 in an amount that exceeds \$50,000, the precise amount of which will be proved at trial.

4 82. As a direct, foreseeable, and proximate result of Defendants' outrageous
5 conduct as alleged herein, Plaintiff has suffered great anxiety, embarrassment, anger, loss of
6 enjoyment of life, and severe emotional distress in an amount that exceeds \$50,000, the precise
7 amount of which will be proved at trial.

8 83. Defendants committed the acts alleged herein maliciously, fraudulently, and
9 oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper
10 and evil motive amounting to malice. Alternatively, Defendants' despicable conduct was
11 carried out in conscious disregard of Plaintiff's rights. Defendants' conduct was carried out by
12 a managing agent, or an officer, a director, or a managing agent of Defendants, and Defendants
13 had advance knowledge of the unfitness of its decision-maker and employed him or her with a
14 conscious disregard of Plaintiff's rights and/or authorized and/or ratified his or her conduct.
15 As a result of Defendants' conduct, Plaintiff is entitled to recover punitive damages in an
16 amount commensurate with each Defendant's wealth.

17 **VII. FIFTH CAUSE OF ACTION**

18 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

19 84. Plaintiff re-alleges and incorporates herein each and every allegation in
20 Paragraphs 1 through 83 of this Complaint as if set forth here in full.

21 85. The relationship between employer and employee is fundamentally contractual.
22 Inherent in this contractual relationship is a covenant of good faith and fair dealing, which
23 implies a promise that each party will refrain from doing anything to injure the other's right to
24 receive the benefits of the agreement and which protects the parties' reasonable expectations.
25 The provisions of the FCA and Tennessee Code are implied by law into all employment
26 agreements, including the employment agreement entered into between Plaintiff and
27 Defendant EODT. By discharging Plaintiff in violation of the FCA and Tennessee Code
28 Section 50-1-304, Defendant EODT injured Plaintiff's right to receive the benefits of his

1 employment agreement and thwarted Plaintiff's reasonable expectations.

2 86. In so doing, Defendant EODT breached the implied covenant of good faith and
3 fair dealing.

4 87. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff
5 has lost income, employment, and career opportunities, and has suffered other economic loss
6 in an amount that exceeds \$50,000, the precise amount of which will be proved at trial.

7 88. As a direct, foreseeable, and proximate result of Defendants' outrageous
8 conduct as alleged herein, Plaintiff has suffered great anxiety, embarrassment, anger, loss of
9 enjoyment of life, and severe emotional distress in an amount that exceeds \$50,000, the precise
10 amount of which will be proved at trial.

11 89. Defendants committed the acts alleged herein maliciously, fraudulently, and
12 oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper
13 and evil motive amounting to malice. Alternatively, Defendants' despicable conduct was
14 carried out in conscious disregard of Plaintiff's rights. Defendants' conduct was carried out by
15 a managing agent, or an officer, a director, or a managing agent of Defendants, and Defendants
16 had advance knowledge of the unfitness of its decision-maker and employed him or her with a
17 conscious disregard of Plaintiff's rights and/or authorized and/or ratified his or her conduct.
18 As a result of Defendants' conduct, Plaintiff is entitled to recover punitive damages in an
19 amount commensurate with each Defendant's wealth.

20 **VIII. REQUEST FOR JURY TRIAL**

21 Plaintiff requests a trial by jury.

22 **IX. PRAYER FOR RELIEF**

23 WHEREFORE, plaintiff requests relief as follows:

- 24 1. For back pay, front pay, and other special damages according to proof;
- 25 2. For general damages to compensate Plaintiff for emotional distress, pain and
26 suffering, and loss of enjoyment of life;
- 27 3. For punitive damages;
- 28 4. For prejudgment interest on all damages awarded;

- 1 5. For reasonable attorney fees under FCA and Tennessee Code Section 50-1-304
2 and any other applicable statute or legal principle;
3 6. For costs of suit incurred; and
4 7. For such other and further relief as the Court may deem just and proper.

5 DATED: 04/24/11

6 By: 

James A. Demarais, Esq.
A Professional Law Corporation
Attorney for **WILLIAM C. HYSER**